

Clarifications to the bidders on RFP Project Documents issued in 21st May 2008 and Corrigendum issued on 16th June 2008 for MSEDCL's Case – I Stage –2 Long Term Power Procurement (LTPP) Bid Process issued on 25 July 2008

Clarifications/Amendments in respect of Request for Proposal

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
1.	RFP	As per "Standard Request for Proposal" recently published by Ministry of Power the bidders are to be qualified on the basis of Network for any of the last 3 years. Qualification of all the bidders should be revised accordingly and the bidders should be allowed to submit their response to RFP for the revised Qualified capacity.	It is clarified that the RFQ stage was over before the Draft Standard Bidding Documents (SBD) were issued for Case I and the evaluation report has already been approved by the MSEDCL Board. Hence no change is proposed and the process shall remain same as defined originally.
2.	RFP	Are the RFP Documents approved by MERC?	The RFP project documents for Case 1 Stage 2 of the bidding process are yet to be submitted to MERC for approval. The RFP project documents shall be submitted to MERC for approval after the pre-bid conference and after incorporating the changes, if any.
3.	RFP	Definition – "Seller". The definition of Seller shall also include "trader"	In order to bring in clarity in the definition of bidder and seller and to address the concern of the bidders, the definition of the 'Bidder' shall be modified as follows; <i>"Bidder" shall mean Bidding Company (including its successors and legal assigns subject to</i>

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			<p><i>fulfilment of conditions given in RFP) or Bidding Consortium (including successors and legal assigns of its members subject to fulfillment of conditions given in RFP) including traders who meet the Qualifying Criteria as specified in the RFQ and have been shortlisted by MSEDCL based on responses to RFQ for submission of Bid and has duly acquired the RFP from MSEDCL.</i></p>
4.	RFP	Can we change delivery point after submission of bids or after award of the bids?	<p>Change in delivery point shall be allowed only till submission of RFP documents. Further, subject to the provisions under clause 3.1.2 (v), Condition Subsequent to be fulfilled by Seller prescribed under PPA, seller needs to finalise the specific delivery point for supply of power in consultation with the Procurer within the time period given there under.</p> <p>In case there is any change in the delivery point while finalisation as above under 3.1.2(v) of PPA from that given under RFP by bidder, any resultant addition in the transmission charges, transmission losses or any other charges shall not considered as pass through and such addition shall need to be the responsibility of the bidder.</p>
5.	RFP	Please clarify if the location has to be in Maharashtra only or anywhere in India?	The location of the generating station can be anywhere in India.
6.	RFP	In case of more than one financial bids will the documents related to Board Resolutions etc. be submitted for each bid separately or one combined set of Board Resolutions etc must be submitted	Even in case of multiple Financial Bids, bidders need to submit only one set of all other submissions, including but not limited to board resolution, etc. However, the Board Resolution provided along with the submission

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		<p>irrespective of no. of financial bids.</p> <p>Further in terms of RFP provisions, the number of financial bids is related to the number of power stations. If a bidder generates power by way of 150 X 2 = 300 MW and as minimum bid size is 100 MW, in such case will the bidder be allowed to make 3 financial bids or only 2? Also can the power station be located at 2 separate locations? What will happen if the bidder after making the no. of financial bids as per no. of power stations and later decides to change the no. of power stations after bid submission?</p> <p>In the matter of submission of more than one price bid from different generating stations, clarification is required whether each bid would be evaluated differently or cumulatively and whether the bidders can quote different tariff for each generating unit.</p> <p>Bidders should be allowed to submit multiple financial bids from the same power station at different tariffs since fuel from different sources may be in use for</p>	<p>should cover the commitment to be provided by the bidder for all projects that the bidder is bidding for. Further only one bid bond needs to be submitted for the total capacity offered.</p> <p>Further, it is clarified that only one bid will be accepted in respect of "One Power Station" i.e. one location only one bid will be accepted and bidders are free to submit multiple price bids for different power stations situated at different locations. As per this clause the bidder can submit only one bid per power station irrespective of the quantum of the power it proposes to supply from that station subject to a minimum quantum of 100 MW. Also bidder can submit different bids for different power stations irrespective of the location of the same. Power station can be changed after submission of bids but the Quoted Tariff shall remain same and no adjustment shall be provided for resultant change in the additional transmission losses, transmission charges or any other charges.</p> <p>It is also clarified that each financial bid will be evaluated separately as if it is a separate bid.</p> <p>No change is proposed.</p>

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7.	RFP	<p>different units at the power station.</p> <p>Please explain the weightage that will be given for evaluation of a bid for amount quoted as "Quoted Escalable Energy Charge" and "Quoted Non Escalable Energy Charges" in each scenario and in different scenarios.</p> <p>For Bids eg in case of scenario 1 – One bids is made with "Nil" Quoted Escalable Energy Charge and the other bid as X % Quoted Escalable Energy Charge and Y % as Quoted Non Escalable Energy Charge. Both bids are of same amount. Please explain which bid will be awarded the project?</p> <p>For Bids in case of Scenario 1 and Scenario 2 : Bid 1 is made with "Nil" Quoted Escalable Energy Charge and Y as quoted Non Escalable energy charge and Bid 2 is made as X % Quoted Escalable Energy Charge and Y % as Quoted Non Escalable Energy Charge. Both bids are of same amount and under same scenario 1. Please explain which bid will be awarded the project?</p> <p>Further, how will you evaluate the allocation of Quoted Escalable Energy Charge and Quoted Non Escalable energy charge in case of comparing 2 bids under different scenarios?</p>	<p>Equal weightage shall be given to all bids irrespective of the scenario. Bids shall be ranked in order of lowest Levellised tariff to highest and the bid with the lowest Levellised tariff shall be selected, then the second lowest and so on till the total contracted capacity sought to be purchased is covered.</p> <p>In case of a tie between two quotations, the rates may be extended upto the fourth decimal and in case of tie thereafter the bidder quoting lower levelised capacity charge will be preferred.</p> <p>As per the Query No 1 of "Clarifications Sought on Corrigendum issued dated 16th June 2008" given hereunder, the bidder shall need to quote "Quoted Non Escalable Capacity Charge" and "Quoted Non Escalable Energy Charge" irrespective of the fuel to be used by bidder for power generation. It is further proposed to specify a ratio to be maintained between the Levellised Quoted Energy Charges and Levellised Quoted Capacity Charges in the total Levellised tariff to be quoted by bidder. The Levellised Quoted Energy Charge shall be minimum 40% of total Quoted Levellised Tariff (a sum of Quoted Levellised Capacity Charge and a sum of Quoted Levellised Energy Charge).</p>
8.	RFP	The Bank Guarantee format does not mention	The Performance Bank Guarantee has to be furnished

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		anything about the clause of the RFP document under which the Bank Guarantee has been issued. Please mention the same so that it is easier for the banker to read the specific clause rather than referring the entire RFP document.	by the bidder as per Clause 2.1.3.2, 2.14.1 of the RFP. Also reference to Annexure 10 – format of performance bank guarantee is present in Clause 2.14.1.
9.	RFP	The Bid Bond has been made for validity of additional 70 days after the expiry of the bid whereas the LOI to the winning bidders will be issued much before that. In such case the Bid Bond must be allowed to be cancelled / surrendered to the bank once the LOI is issued to the winning bidders. However, such return/cancellation may be done only with a specific written letter from MSEDCL.	Appropriate provisions are made in clause 2.13.3 of RFP for Return of Bid Bond of all bidders and no further change is proposed.
10.	RFP and PPA	Risk on account of non-availability of CTU transmission during the term of the Agreement, for any reason should be pass through.	Risk of non availability of CTU transmission cannot be borne by MSEDCL and shall have to be borne by the bidder. However, making available the Intra-state transmission network shall be a responsibility of MSEDCL and same shall be provided for in the PPA as MSEDCL's obligations.
11.	RFP Clause 2.3.1	Request is made for the Procurer to assist the Bidder in obtaining all statutory clearances.	The Bidder shall be responsible for obtaining all clearances.
12.	RFP Clause 2.4.1	In terms of provisions of PPA, Seller may make third party sell in case MSEDCL in not able to evacuate the power either during preponement of Scheduled CoD of the plant or during the operational period of the plant. offer Scheduled Commercial Operation Date, for whole or part of the capacity offered, before expiry of 48 calendar months from the date of signing of the PPA. The bidder has to declare such schedule at the time of bid submission. Thus the bidder can provide a Unit	It is clarified that the bidders are free to make third party sell in case of inability of the MSEDCL to evacuate the power as per the terms and conditions provided in the PPA (article 4.4, 6.3.5, 11.5 and 14.4.5) and tariff shall not be governed by MSEDCL. Further bidders are free to quote any date as CoD of the plant within the time limits provided in RFP. However in terms of article 3.1.2 (vii), Seller needs to inform by notice to MSEDCL his intensions of

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		<p>wise schedule for commencing supply of the Contracted capacity (power supply schedule) to MSEDCL. In the event the plant is commissioned earlier than the stipulated 48 months, power must be supplied only to MSEDCL and no third party sale is allowed. However if the Maharashtra STU is unable to evacuate such early power from the delivery point, the plant would be allowed to sell power to a third party till such time as Maharashtra STU can start evacuating power from the delivery point.</p> <p>In case of third party sale, would tariff be decided by procurer or does the Seller have the authority to decide its own tariff?</p> <p>In case early commissioning is not declared during submission of bid whether third party sale shall be allowed if early commissioning can be achieved but not disclosed during bid submission?</p>	<p>preponement of the "Original" Scheduled CoD of the plant and such date shall be referred to as "Revised" Scheduled CoD for all references provided in the PPA.</p> <p>Further, as provided under clause 6.1.1 and 6.2.2 of the PPA, the seller has to give written notice to the concerned authorities regarding the synchronisation / commissioning of the plant within time frames as prescribed therein under.</p>
13.	RFP Clause 2.4.2	<p>In the table of Clause 2.4.2 applicable incentive for quarter no.Q8 i.e. Oct – 10 to Dec – 10 is mentioned as 19 paise. Please review and confirm.</p> <p>The RFP document provide for incentive rates per quarter early commissioning @ 1 paise per unit/quarter.</p> <p>The Bidder suggested that third party sale should be allowed in case of early commissioning as developer will have to incur</p>	<p>The incentive for Q8 i.e Oct -10 to Dec -10 shall be modified from 19 paise to 9 paise.</p> <p>It is informed that the bidders are allowed to make third party sale only as per the terms and conditions proposed in PPA and no further change is proposed.</p>

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		<p>additional cost and effort to achieve early commissioning.</p> <p>As the incentive rate for early commissioning is abnormally low as compared to LD for delay in Schedule Commercial Operation Date which more than 50 paise per unit, there is no incentive for the developer to achieve early commissioning. If MSEDCL decides not to allow third party sale, then the rate of incentive should be increased substantially and made comparable with penalty for delay in commissioning.</p>	
14.	RFP Clause 2.4.3	<p>If COD of a Unit or of the Contracted Capacity is delayed beyond the Scheduled Commercial Operation Date as offered by the Bidder in response to the RFP, the Bidder shall be liable to pay to MSEDCL liquidated damages as per the PPA.</p> <p>Clarification required: If COD of a Unit or the Contracted Capacity is delayed beyond the Scheduled Operation Date but not beyond 48 months from the date of signing the PPA whether LD shall be payable.</p> <p>Further,</p> <p>a. Penalty for delay in commissioning should be payable only if State evacuation is ready, else not.</p> <p>b. In case the Seller is ready and evacuation from Delivery Point is not ready that the measures need to be spelt out in the Agreement to avoid</p>	<p>It is clarified that the liquidated damages for delay in the commissioning of the plant are specified under article 4.6 of the PPA and the same shall be payable even in case the COD of a Unit is delayed beyond the Scheduled Operation Date but not beyond 48 months from the date of signing the PPA.</p> <p>No change is proposed.</p> <p>No change is proposed.</p>

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		<p>difference of opinion at later date.</p> <p>c. LD clause should also incorporate commissioning of capacity in parts i.e. Unit 1 commissioned then penalty should be only on the balance Contracted Capacity.</p> <p>This clause inter-alia provides that delay in commercial operation date due to non-availability of Open Access on the CTU network shall be considered to be a Force Majeure Event.</p> <p>Non availability of open access whether on CTU network or STU network shall not be treated as Force Majeure as either parties, Seller or Procurer may take shelter of this provision in case of delay or default on any other account.</p>	<p>It is clarified that the relevant clause states that the penalty is leviable unit wise only. Hence, no change is proposed.</p> <p>No change is proposed.</p>
15.	RFP Clause 2.5.4	<p>Transmission loss is announced by RLDC on fortnightly basis. Whether the charges towards loss shall be reimbursed based on RLDC announcement in their website.</p> <p>This clause provides that all the transmission charges/losses shall be borne by MSEDCL on actuals through out the term of the PPA. Whereas for evaluation of bids the transmission charges/losses prevailing at the time of bid submission would be taken into account without escalation during the term of PPA.</p>	<p>The transmission charges, transmission losses, RLDC/SLDC charges shall be reimbursable to the bidder as provided for under clause 2.5.4 of the RFP document. The same shall be based on the charges as approved by the appropriate Commission and losses notified by RLDC.</p> <p>As far as the evaluation of bids is concerned, the transmission charges shall be escalated at a rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline. Previously, CERC did not issue this escalation rates for transmission charges. Further, in case CERC does not notify such rate atleast 7 days prior to the bid evaluation deadlines, escalation</p>

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		<p>This clause is not in line with the provisions in the draft SBD circulated by Ministry of Power for Case-1 Bidding which provides for escalation factor to be notified by CERC for Transmission Charges/Losses which would be taken into account even for evaluation of Bids. To this clause should be aligned with the provision of draft SBD of MOP as it is the fact that the transmission charges are bound to escalate over a period of time.</p>	<p>rate notified by CERC for capacity charge shall be used. These proposed escalation rates will be used uniformly for all the bidders and may be disclosed to the bidders at the time of finalisation of the RFP/PPA documents.</p>
16.	RFP Clause 2.8.1.1 (6)	<p>Undertaking in the prescribed format in Annexure 9 from the Parent Company and/or Affiliate, of the Bidding Company/ any member of the Bidding Consortium, whose technical and financial credentials have been provided in the Bid submitted in response to the RFQ, or Undertaking of the Ultimate Parent, in the prescribed format in Annexure 9, for total equity investment commitment of the Parent Company and all Affiliates (of the Bidding Company/ any member of the Bidding Consortium) whose technical and financial credentials had also been provided in the Bid submitted in response to the RFQ. Provided further, in case the Ultimate Parent is also the Bidding Company, no such Undertaking shall be required.</p> <p>In case of a trader, will the parent of the trader on whose basis the trader has qualified at the RFQ stage, be required to give the Board resolutions and Undertaking?</p>	<p>In case the bid submitted by bidder being Trader, the board resolution for commitment of investment of equity in the project needs to be given by generating company from whom the trader proposes to supply the power to Procurer. Further such board resolution / undertaking can be provided by Parent / Affiliate / Ultimate parent company, in case such company is making equity investment in the said project.</p>
17.	RFP Clause 2.8.1.3(b)	<p>If for any reason the Bid of the Bidder with lowest evaluated Levellized Tariff is rejected or the LOI issued</p>	<p>No deviation is proposed to be sought from the standard bidding guidelines and bidding documents.</p>

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		<p>to bidder is cancelled, the Procurer may;</p> <ul style="list-style-type: none"> • Invite best reduced financial bids from those Bidders whose Bids are responsive and valid on that date <p>This be changed to</p> <ul style="list-style-type: none"> • Consider the next lower bid valid on that date; <p>In case of rejection of the lowest bidder it would be rational to go to the next lower bidder instead of inviting best reduced price bid from all the bidders.</p>	
18.	RFP Clause 2.8.3.1	<p>In case a trader forms a bidding consortium, then who would be required to give such Board resolution?</p> <p>Can trader enter into the consortium post RFQ qualification?</p>	<p>The board resolution for investment in the project will have to be provided by the generator company who has been identified as the source of power in the bid and not from the Traders company as provided for in clause 2.5.4 of the RFQ document.</p> <p>It is clarified that a Trader can enter in the consortium as per the provisions of 2.8.3 of RFP.</p>
19.	RFP Clause 2.8.3.1	Can the capacity on the basis of which the bidder has qualified at the RFQ Stage be enhanced due to change in consortium at the RFP stage?	Bidders shall not be allowed to change the Capacity Offered at the RFP stage.
20.	RFP Clause 2.8.3.1	If a qualified bidder forms a consortium at the RFP stage with the trader, would such consortium be allowed to supply power from a generating station different from the generating station identified at the RFQ stage.	Yes, the project proposed at RFQ stage may be changed at RFP stage, subject to provisions as stipulated in the RFP/PPA documents, provided the changed project shall supply power to MSEDCL within the stipulated timelines as per the RFP. However details relating to proposed power station from which the power will be sold to MSEDCL needs to be given as

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			per format 4 of Annexure 4 of RFP.
21.	RFP Clause 2.8.3.1	<p>In a Consortium, if one of the members is a trader, then can the trading license be used by the consortium or the SPV for trading the Power.</p> <p>If an SPV is formed from the consortium, would the SPV required to have a specific trading license?</p>	<p>In case a generation company is the lead member of the consortium, there is no need for a trading license for the consortium. However, if the lead member is not a generating company, then the lead member should have a valid trading license.</p> <p>SPV, if formed as a generating company needs no license for sale of power to traders/licensee/bulk consumers. However, if the SPV is formed as a trading company, it needs to have a valid trading license at the time of submission of RFP bid.</p>
22.	RFP	Is it necessary to have a trading license at the RFP stage or the Bidder can submit its bid on the basis of "applied for" trading license. In case of delay in the regulatory process.	In case the bidder is planning to bid as a "trading" company and not as a generator, it is necessary to have a valid trading license at the RFP stage and submit the same while submitting the RFP bids.
23.	RFP	Joint Deed Agreement – Can this Document be modified according to certain terms between the consortium parties.	The Joint Deed Agreement shall be submitted only in the format specified in the RFQ document. No modifications are permitted.
24.	RFP Clause 2.8.3.3	<p>.....Any such change may be permitted, provided that the Bidder after such change is qualified as required by the provisions of the RfQ, including technical and financial requirements and also meets the provisions of clause 2.8.3.4 and clause 2.8.3.5.</p> <p>The technical requirement needs to be deleted as it was not part of the RFQ process.</p>	The technical requirement shall be deleted from the relevant clause to bring it in line with the RFQ document.
25.	RFP Clause 2.8.4.1	Equity Lock-in condition: It is further clarified that in case equity is held by the Affiliates, Parent Company or Ultimate Parent, subject to the proviso below, the	As per the provisions of RfP, the lead member is required to hold 26% for 5 years from CoD, either on its own or through its parent/affiliates. However, the

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		<p>Selected Bidder shall be permitted to transfer its shareholding in the Seller to its Affiliate/s or Ultimate Parent. If any such shareholding entity, qualifying as an Affiliate/Ultimate Parent, is likely to cease to meet the criteria to qualify as an Affiliate/Ultimate Parent, the shares held by such entity shall be transferred to another Affiliate/Ultimate Parent.</p> <p>Does this mean that in case Parent/Lead member is having below 51% of the equity and above 26% of the equity, than this condition can be fulfilled jointly with other members?</p>	<p>requirement of 51% can be met jointly by all members on their own or through their respective parent/affiliates.</p>
26.	RFP Clause 2.9.1 and 2.9.2	Mentions bid deadline as 17 th October 2008 and 18 th September 2008 respectively.	It is clarified that the timelines mentioned in Clause 2.9.2 are correct and the bid deadline is 18 th September 2008. Clause 2.9.1 shall be suitably modified.
27.	RFP Clause 2.11.3	Please clarify whether authorized signatory should initial the pages which are signed by himself. Whether the original documents/certificates like bid bond, certificates from Auditors etc should also be initialled.	Each page of the original bid has to be signed and stamped by the Authorized Signatory. However, the original documents like bid bond and bank guarantee should not be initialled by the Authorized Signatory.
28.	RFP Clause 2.11.4	Please clarify what is meant by attested copy of the bid when each page is signed /initialled by the authorized signatory on original and appears on photocopy.	Each page of the photocopy of the bid document also must be initialled by the Authorized Signatory for attestation.
29.	RFP Clause 2.13.2	The Notice of 3 days must be given 7 days prior to the invocation of the Bid Bond and not after the invocation of Bid Bond, so that the defect may be cured in the said time period.	<p>The clause 2.13.2 shall be modified as under:</p> <p><i>"2.13.2 Subject to the provisions of Clause 2.1.4, the Bid Bond may be invoked by MSEDCL, by giving 7 days written notice to Seller, on account of any of the following....."</i></p>

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30.	RFP Clause 3.4.1.1	<p>The Levellized Tariff calculated as per Clause 3.3.2.1 shall be ranked from the lowest to the highest. The priority for selection of bidder in case of two bidders bidding for same Levellized tariff shall be on the basis of lower Non-Escalable capacity charge. MSEDCL shall select successful Bidder/Bidders to contract for capacity up to its required capacity or such capacity whose tariff is within its acceptable range, both of which shall be determined solely at its own discretion. Letter if intent shall be issued to such successful bidders subject to Clause 3.4.1.2.</p> <p>Following addition proposed:</p> <p>The Bidder with the lowest Levellized Tariff shall be declared as successful bidder for the whole or part of the capacity offered by the bidder to MSEDCL.</p> <p>If such capacity offered to MSEDCL is less than 2000MW, the Bidder with next lowest Levellized Tariff (out of Levellized Tariffs submitted by the remaining bidders) shall be declared as successful bidder for the whole or part of the capacity offered by the bidder to MSEDCL.</p> <p>This process shall be repeated until MSEDCL selects bids for the capacity it wishes to procure. (The same is proposed on the lines of Case – I Stage – 1 Bidding).</p> <p>Once the evaluation is complete and the L1 bidder(s) are identified, is there any scope for further negotiation with respect to quotes?</p>	<p>The clause 3.4.1.1 shall be modified to make the provisions of the Case – I Stage -2 Bidding process in line with the provisions of the Case- I Stage – 1 bidding process.</p> <p>Further addition proposed in the clause is as under: “However, if the procurer believes that the tariff quoted by the bidders is not acceptable to it, it can discontinue the procurement even if the total cumulative capacity procured does not reach the 2000 MW level.”</p> <p>Further, it is clarified here that the procurer has initiated the process for procurement of <i>upto</i> 2000 MW capacity and the Procurer at his discretion can discontinue the procurement process, if in its opinion, the tariff quoted by the bidders is not acceptable to him.</p> <p>Price quotes can be negotiated at the discretion of MSEDCL.</p>
31.	Clause	Can the Bidders offer more than Eligible Capacity?	No.

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	3.4.1.3 of RFP	Please clarify.	
32.	RFP Annexure 4 – Format 1	Clause7 (b) are all units to be commissioned within 48 months?	Yes, all the proposed units from which the power will be supplied needs to be commissioned within 48 months from the effective date.
33.	RFP Annexure 3 – Format 1	<p>6.) A copy of the SLDC/RLDC notification needs to be submitted along with the price bid.</p> <p>There is no notification regarding RLDC/SLDC charges but such charges are fixed by Appropriate Commission from time to time. The provision of furnishing copy of notification may be deleted.</p>	Copy of the appropriate Commission’s Order which notifies the prevailing charges may be furnished. Relevant changes shall be incorporated in the document.
34.	RFP Annexure 4 – Format 3	<p>Calls for Bidders to submit rated capacity in MW.</p> <p>Please do not seek the rated capacity as the bid is with respect to contracted capacity.</p> <p>Since the bidder is committed to supply the contracted capacity, this clause may be deleted.</p>	The requirement of mentioning the Net Rated Capacity in Format 3 of Annexure 4 of RFP will be relaxed. However, the delivery point shall remain as defined in the issued RFP and PPA to bidders.
35.	RFP Annexure 4 – Format 4	<p>Calls for fuel features such as GCV in kcal/kg, Ash and fuel content of sulphur etc.</p> <p>Please do not seek fuel characteristics as it being Case – I bid and fuel is not pass through based on heat rate, this may please be deleted.</p>	The relevant clause shall be deleted from the RFP document.
36.		Can the project proposed at RFQ stage be changed in RFP stage?	It is permitted to change the project proposed at RFQ stage in RFP stage. However such project cannot be changed subsequent to RFP, except otherwise provided in RFP/PPA.

Clarifications/Amendments in respect of Power Purchase Agreement

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1.	Page 3 of Heading of the agreement	In the place of [Insert Name of the Generating Company], (the Seller) change should be made as [Insert Name of the Generating Company / Power Trading Company], (the Seller)	Change accepted and suitable changes shall be made to the RFP project documents.
2.	Article 1.1 Definitions Delivery Point or Injection Point	<p>..Provided that the definition of point of separation.....Section 73 of the Act.</p> <p>This proviso could be deleted as the same is not relevant and may cause avoidable confusion.</p>	<p>The definition of the "Delivery Point" or "Interconnection Point" is proposed to be amended as follows</p> <p>"Delivery Point or Interconnection Point means the points of delivery for fulfilling the obligation of the Seller to deliver the Contracted Capacity to the Procurer</p> <p>provided that such Delivery Point shall be Seller – Maharashtra Intra State Transmission System interconnection point in case the Seller is connected to the Maharashtra Intra State Transmission System,</p> <p>provided that such Delivery Point shall be Maharashtra Intra State Transmission System – CTU interconnection point in all other cases.</p> <p>Further "Intra State Transmission System" means any system for conveyance of electricity by transmission lines within the area of the State and includes all transmission lines, sub stations and associated equipment of transmission licensees in the State of Maharashtra:</p>

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			<p>Provided that the definition of point of separation between a transmission system and distribution system and between a Generating Station and transmission system shall be guided by the provision of the Regulations notified by the Central Electricity Authority under clause (b) of Section 73 of the Act;</p> <p>To bring in abundant clarity in this matter it is mentioned that Intra State transmission system shall comprise composite transmission network of Maharashtra State Electricity Transmission Company Limited, Tata Power Company, Reliance Energy Limited and any other transmission licensee, in future."</p> <p>Further the definition of Scheduled Energy shall be amended as follows; "Scheduled Energy" or "Scheduled Generation" means energy corresponding to Declared Capacity as defined in ABT, at the delivery point."</p>
3.	PPA Definitions and Article 4.7.1 , 6,12,8	"Independent Engineer" definition and references to it in the Articles 4.7.1, 6,8,12 be deleted being Case – I and appropriate penalty/damages are already provided if the Seller fails to deliver the Contracted Capacity till the delivery point, the appointment of Independent Engineer may please be waived.	No Change is proposed.
4.	PPA Definitions	"Minimum Offtake" of 65% be increased to 80%.	No change is proposed.
5.	PPA Definitions	Capital Cost: In case of part capacity bid joint appointment of auditors is not possible. The cost in financing agreement is only an estimated cost.	The word "Joint" shall be deleted from the definition.

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		Please delete the word "joint". The capital cost should be audited cost of the completed project on the date of COD of the last unit.	
6.	Schedule 6: Clause 1.2.5	<p>"In case the Availability for a Contract Year is less than 75%, the Seller shall pay a penalty at the rate of 20% of the simple average Capacity Charge (in Rs. /Kwh) for all months in the Contract Year applied on the energy (in Kwh) corresponding to the difference between 75% and Availability during such contract year."</p> <p>It may please be clarified that such Availability shall be computed at the "Generation Bus Bar" and not at "Delivery Point" as there may be a decrease in the annual contracted capacity due to an increase in the transmission losses/ non-availability of transmission network. This may please be taken into account and suitable clarification be issued.</p>	As per the provisions of the RFP/PPA documents, the procurer has accepted the risk of only CTU losses, CTU Transmission charges and any other related charges thereof and hence the calculation for availability shall be at the CTU interconnection point which is the injection point for the generator. The bidder is required to bear any STU transmission charges, losses etc upto CTU interconnection point.
7.	Article 3.1.1	<p>Simultaneously with the execution of this Agreement, the Seller shall have provided to the Procurer, security deposit in shape of an irrevocable, unconditional Performance Guarantee.</p> <p>Will the Performance Guarantee be furnished at the time of signing of the PPA?</p>	As per clause 2.1.3.2. of RFP, the successful bidder needs to furnish the Performance within 3 weeks of issue of Letter of Intent by Procurer.
8.	Article 3.1.2 of PPA	This Article has heading "Satisfaction of Conditions subsequent by the Seller and the Procurers". Does not contain the conditions to be satisfied by the Procurer. Clause 3.1.2A should have that the Procurer shall ensure interconnection facilities and power evacuation before the Scheduled COD as a condition Subsequent for the Procurer.	No change is proposed in the clause 3.1.2A. However, the condition related to making available the interconnection facilities and power evacuation before the scheduled COD is proposed to be included in Procurer's obligations under Article 4.2 of PPA.

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
		<p>The Procurer shall ensure "Obtaining order of the Appropriate Commission adopting the tariff under Section 63 of the Electricity Act, 2003, within six months of the Effective Date."</p> <p>Consequences of non-fulfilment of this condition by the Procurer, like payment of LD, need to be stipulated in the PPA. The LD amount should be comparable to LD payable by Seller.</p>	<p>The section 63 of the Electricity Act 2003, mandates the Commission to adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. Further, the entire bidding process is also being conducted with the approval of the Commission and all the project documents are also being approved by the Commission. In view of the same, it is very unlikely that the Commission shall not adopt the tariff and hence no change in the provisions is proposed.</p>
9.	Article 3.3.1 of PPA	<ul style="list-style-type: none"> • In case the Initial Consents are not received in time, as they have to be obtained from Govt. Departments, would the delay in SCOD, if any, be subject to weekly Performance Guarantee or the SCOD shall be extended on day to day basis? • The non – availability of consents from the Govt. Department could be considered as Force Majeure as it is not in hands of the Selected Bidder? • 2 Business days is too short a period for arranging for additional performance guarantee. The time limit should be atleast 10 working days. 	<ul style="list-style-type: none"> • As per Article 3.1.2 the time period of 18 months from Effective Date is given for fulfilling such Conditions Subsequent which is sufficient and it is not proposed to be extended further. • Events of force majeure shall be governed by the article 12 of PPA. • No change is proposed.
10.	Article 4.4.3	<p>If a Procurer does not avail of power upto the Available Capacity by the Seller corresponding to the Contracted Capacity, and the provisions of Article 4.4.2 have been complied with, the Seller shall be entitled to sell such Available Capacity not procured, to any person without losing the right to receive the</p>	<p>As per the provisions under article 4.4.2 of the PPA, written consent of procurer is required. The parties can jointly agree on the period for not availing the power at the time for getting the written consent.</p>

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
		Capacity Charges from the Procurer for such un-availed Available Capacity. The time period needs to be clearly specified as by what period the Procurer may not avail the available capacity.	
11.	Article 4.4.6	Procurer would also provide suitable notice period to the Seller to commence the supply of power at the delivery point. The Notice Period needs to be clearly mentioned. In case no Unit is declared for early commissioning but the Unit get commissioned before 48 month whether such early power is allowed to be sold to third party.	20 days notice period shall be provided to bidders for commencement and re-commencement of supply of power to MSEDCL.
12.	Article 4.4.7 of PPA	For procurement of power earlier than 48 months, incentive schedule has been provided with fixed period i.e. quarterly incentives shall be paid from Jan 09 – Mar 09, Apr 09 – Jun 09 etc. For the purpose of calculation of incentives, the fixed period should be linked to Effective Date.	Quantum of incentives (for early Commissioning of the Project) shall remain unchanged. However, the payment of incentives shall be linked to early commissioning from 48 months instead a fixed date for starting the incentive payment, as provided presently.
13.	Article 4.7.1	Procurer shall pay to Seller amount equivalent to that received from the STU/CTU if the Units are not commissioned due to unavailability of transmission system. There should be no difference in treatment of delay caused due to unavailability of transmission system or any other procurer event of default.	No change proposed.
14.	Article 8.3	Availability: Each Unit is independent of other. In case sale of other Units is through Case – I tender, than in	As per the provisions, if the plant capacity is 500X2 MW, and contracted capacity with the procurer is say

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
		an event if the Unit dedicated to say GUVNL is down than it is not possible to schedule from unit dedicated to MSEDCL. Hence Vice-Versa may not be possible to implement.	300MW (i.e. 60% of unit capacity) from the 1 st unit, than in the event if the availability is only 400MW than the seller will necessarily need to supply atleast 60% of 400MW i.e. 240MW. However seller is free to supply more than 240MW, if he desires so upto 300MW.
15.	Article 8.2.2 b) of PPA	Further, the Quoted Non –Escalable Capacity Charge shall be reduced by the following: Rs. 0.25/kwh x [1 – {(Tested Capacity of all Commissioned Units + Contracted Capacity at the Effective Date of all Units not Commissioned)/Contracted Capacity at the Effective Date of all Units}]; Explain with example.	The same is attached herewith as annexure I.
16.	Article 9.2	All scheduling and SLDC charges applicable shall be borne by the Procurer, beyond the Delivery Point. Does it mean that scheduling charges of the SLDC within which the Seller’s plant is located shall be borne by the Procurer.	Only the scheduling and SLDC charges beyond the Delivery Point to the Distribution Points of MSEDCL shall be borne by MSEDCL.
17.	Article 11.1	Firm or Infirm Power shall be scheduled by RLDC/SLDC and payment of capacity charge shall be on the basis of availability and energy charge shall be payable on scheduled energy. Hence the payment does not have any bearing on meter reading. Please modify the entire para.	No change is proposed.
18.	Article 11.3.5	Payment of Monthly Bills: Energy charges shall be based on the final implemented Scheduled Energy upto 25 th day of the Month. Need more clarity for remaining days of the Month.	This provision is only for payment based on “provisional” bill. The provisional bill will take into account the actual energy supplied upto 25 th of each month. The balance 5 days will be adjusted in the

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
			actual bill that will be issued to the procurers subsequently. The same has been clearly outlined under article 11.3.5 of the PPA.
19.	Article 11.5.7	<p>Sales to any person or Party, other than the Procurer under Article 11.5, shall cease and regular supply of electricity to the Procurer in accordance with all the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this date at the option of Seller:</p> <p>(a) the day on which the Procurer pays the amount due to the Seller and renews the Letter of Credit and restores Default Escrow Account (if applicable) as mentioned in Article 11.4.2.1 ; or</p> <p>(b)the date being "x" days from the date on which the Procurer pays the amount due to the Seller, where "x" days shall be calculated in accordance with Schedule 2.</p> <p>Point (a) is proposed to be changed as follows:</p> <p>a) upto maximum twenty (20) days after the day on which the Procurer pays the amount due to the Seller and renews the Letter of Credit and restores Default Escrow Account (if applicable) as mentioned in Article 11.4.2.1 ; or</p> <p>Notwithstanding anything to the contrary contained in this Agreement, upon occurrence of an event where the Procurer has not made payment by the Due Date of an Invoice through the payment mechanism provided in this</p>	It is proposed to give a period of maximum of 20 days for the seller to resume the supply to procurer after the procurer has cured the event of default as provided under article 11.5.7 (a). The relevant clause will be modified accordingly.

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
		<p>Agreement, the Seller shall have the right (but not the obligation) by giving a 7 days notice to the Procurer”.</p> <p>After getting the right to sell power to third party under such provisions and If the Seller enters an agreement to sell the power to third party for a period of say 30 days then the Seller cannot cancel the agreement within short time even procurer makes payment. Therefore, upto maximum 20 days should be considered.</p>	
20.	Article 11.9	<p>Payment for Start-up Power. The Seller shall be liable to pay, for the power and energy consumed for start-up of the Project and commissioning, to the distribution Licensee(s) in whose area the Project is located or such other entity from whom such power/energy is sourced, at the then prevalent rates payable by such industrial consumers. Please delete as what if the Seller gets discounted rate.</p>	<p>It is clarified that the provision is applicable only in case Seller avails the start up power from MSEDCL. He is free to arrange for any alternate source on its own.</p>
21.	Article 13.1	<p>Non extension of tax holiday under Section 80IA of Income Tax Act be included as a Change in Law.</p>	<p>No change is proposed.</p>
22.	Article 13.2 (b) Change in Law – Operation Period	<p>...“Provided that the above mentioned compensation shall be payable only if and for increase/decrease in revenues or cost to the seller is in excess of an amount equivalent to 1 % of the Letter of Credit in aggregate for a contract year</p> <p>It is understood that the aggregate increase/decrease in revenues/cost mentioned</p>	<p>The aggregate increase/decrease in revenues/cost mentioned in this Article shall be on account of all the incidences of Change in Law taken together.</p>

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
		in this Article shall be on account of all incidences of Change in Law taken together. This may be confirmed.	
23.	Article 13.4.2	Payment for Change in Law shall be through Supplementary Bill however, Clause 11.4.1.4 states the Seller shall not be entitled to drawdown on the Letter of Credit for any failure of the Procurer to pay a Supplementary Bill. This needs to be clarified, if the payment due to change in law is not made then what recourse is to be adopted other than recourse provided in 11.8. Any change in law having a recurring impact shall form a part of the tariff and not Supplementary Bill.	No change is proposed and the article 13.4.2 of the PPA covers it adequately.
24.	Article 14.1(vii) of PPA	Would assigning the rights to the Lending Institution for raising debts for the project amount to Event of Default, or will it be permitted assign as in Article 16.	The same is not an event of default and is permitted.
25.	Schedule 6 – 1.2.4	If and to the extent the Availability in a Contract Year exceeds eighty percent (80%), an incentive at the rate of 40% of the Quoted Non Escalable Capacity Charges (in Rs./kWh) for such Contract Year mentioned in Schedule 10 subject to a maximum of 25 paise /kwhr, shall be allowed on the energy (in kwh) corresponding to the Availability in excess of eighty percent (80%). As per CERC norms the entire fixed charges are recoverable at 80% PLF and there is an incentive for availability greater than 80%. Same may be provided in the Bid.	No change is proposed.
26.	Schedule 6 –	Transmission/Wheeling Charges and Scheduling	Not proposed to change as recommended by bidder.

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
	1.2.7	<p>Charges.</p> <p>Transmission charges, losses, RLDC/SLDC charges may be aligned to the existing mechanism followed in Central Generating Stations, wherein the transmission charges have no bearing on the availability of Generating station availability.</p>	
27.	Schedule 8	<p>As per para 5 of this schedule, the escalation in the fuel energy charge in case of domestic coal shall be decided based on the coal prices declared by Govt./CIL.</p> <p>Revision Proposed because, In case of coal linkage from subsidiaries of CIL, coal price at the delivery point of colliery side comprises of the ROM price of coal + sizing charge +Royalty +STOED+ Surface Transport Charges + ST.</p> <p>The values of these components of the coal price declared by appropriate authorities should be considered for working out the escalation in the escalable fuel energy charge and not only the ROM coal price (price of coal declared by Govt. /CIL).</p>	<p>It is now proposed that the irrespective of the fuel being used for generation of power, the bidders shall have to only quote the non-escalable capacity charges and non-escalable energy charges.</p>
28.	PPA	<p>Suppose the bidder has formed a new SPV for the purpose of execution of the project and the new SPV does not have any banking lines to issue Bid Bond. Can the bidder use the banking lines of its members hold more than 26% stake in the SPV and are shareholders of the bidder to issue the bid bond(i.e. the SPV formed for executing the project)</p>	<p>It is proposed that in case the Bid Bond is not submitted by the SPV, it may have to be submitted by the bidder who has the highest equity stake in that SPV (minimum 26% equity holding in the SPV).</p>

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
29.	Article Nos.5, 6, 7, 8 & 10	<p>Articles relating to Construction, Performance Tests, De-rating, O&M, Capacity, Insurances etc.</p> <p>Relevance of these stipulations in cases where only part capacity of a Unit/Station is supplied by the bidder needs to be reviewed. Customization of PPA may be allowed in case of part capacity is offer.</p>	No Change is proposed.
30.	Article 12.3	In case of trader being the seller, as per clause 2.1.7 of RFQ, such trader need to submit the documentary proof of back to back arrangement with Generator which may be a signed copy of PPA. It is requested to that force majeure events provided there under for Generator, should also be included as force majeure conditions in the PPA between the Trader and the procurer.	It is informed to the bidders that the Force Majeure Events of generator shall be regarded as Traders' force majeure events under the PPA to be entered with Procurer by Trader, <i>to the extent of the force majeure events specified under the PPA to be entered between Trader and Procurer.</i>

Clarifications/Amendments in respect of Corrigendum issued dated 16th June 2008

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
1.	Clause 2.8.1.4.1 of RFP	<p>Bidders using blended coal will be required to quote only Fixed Non Escalable Capacity Charge and Fixed Non Escalable Energy Charge.</p> <p>In view of volatility in coal prices it is not possible to quote as non escalable capacity charges and also as non escalable energy charge for any tariff valid for 25 years. At best the proportion of blending and the respective escalation indices may be applied to arrive at escalated price.</p>	It is now proposed that the irrespective of the fuel being used for generation of power, the bidders shall have to only quote the non-escalable capacity charges and non-escalable energy charges.
2.	Clause 2.14 of RFP, Article 3.3.1 of PPA, Article 3.3.2 and 3.5.1 of PPA	<p>Increase in the amount of Performance Guarantee from Rs. 7.5 lakhs/MW to Rs. 30 lakhs/MW,</p> <p>Increase in additional weekly Performance Guarantee from 0.375 lakhs per MW per week to 1.5 lakhs per MW per week.</p> <p>Increase in Liquidated Damages from Rs. 10lakhs to Rs. 40 lakhs per MW.</p> <p>Quantum of increase in Performance Guarantee is very high and not justified.</p>	No change is proposed.
3.	Article 3.3.2	<p>The seller shall also have the right to terminate the PPA in case Procurer is unable to get Regulatory approval within 3 months from the date of execution of PPA.</p> <p>Appropriate damages payable by the Procurer in such event may be mentioned.</p>	The section 63 of the Electricity Act 2003, mandates the Commission to adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. Further, the entire bidding process is also being conducted with the approval of the Commission and all the project documents are also being approved by the Commission. In view of the same, it is very unlikely that the Commission shall

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
			not adopt the tariff and hence no change in the provisions is proposed. However, the same shall be provided under article 3.1.2A of PPA as condition Subsequent to be fulfilled by Procurer.
4.	Article 4.4.1	<p>May please be deleted if the PPA is terminated due to Seller's event of default.</p> <p>Once the PPA is terminated it does not justify either party to have any right of whatsoever nature. If the PPA is terminated due to Seller's event of default, it doesn't justify for the Procurer to have first right of refusal to procure power from the plant over the remainder of the PPA term.</p> <p>Second para of this suggested insertion should be revised as follows: "Notwithstanding anything contained in the Agreement, the Procurer shall continue to have right over power generated (to the extent of contracted capacity) from the Unit/Units proposed at RFP stage in format 4 of Annexure 4 for supply of contracted capacity under this agreement.</p> <p>This clause may be retained provided the Procurer should compensate the seller the loss incurred by it due to termination of this agreement.</p>	The amendment is withdrawn by the procurer.
5.	Article 14.3.5	"Further the Seller shall have the liability to make payment of such capacity charges based on Normative Availability to the Procurers for the period of three (3) years from the eighth day after the expiry of the Consultation period.	Article 14.3.5 of PPA as proposed the corrigendum shall be deleted.

Sr. No.	Document Reference	Query /Suggestion/Clarification	Comment
		<p>Any liability of the Seller for payment of such capacity charges and the Procurer's right over such Contracted capacity may please be deleted.</p> <p>The existing L.D. itself is very high and there is therefore no need to add further L.D. Moreover, the LD for seller as well as Procurer should be identical on both side, as it is also extremely important for Seller that Procurer abide by its obligation under the PPA and do not wriggle out.</p>	
6.	Article 18.9	<p>Insertion of reference to Article 4.4.1 is made in Article 18.9.</p> <p>Article 4.4.1 can be added provided para no. 2 of suggested amendment in Article 4.4.1 above is eliminated otherwise these clauses are conflicting each other.</p>	The amendment is withdrawn by the procurer.

Annexure I

Illustration for Article 8.2.2 (b) of PPA

Case 1:

No. of Units : 2
 Capacity of Each Unit : 100 MW
 Total Contracted Capacity : 200 MW
 Tested Capacity – Unit 1 :100 MW
 Tested Capacity – Unit 2 : 80 MW
 Contracted Capacity at the Effective Date of all Units not Commissioned: 0 MW

Reduction in Quoted Non –Escalable Capacity Charge:

Rs. 0.25 / kWh × [1 – {(Tested Capacity of all Commissioned Units + Contracted Capacity at the Effective Date of all Units not Commissioned)/Contracted Capacity at the Effective Date of all Units}]

$$0.25 \times [1 - \{(180 + 0)/200\}]$$

Reduction in Quoted Non –Escalable Capacity Charge = **Rs. 0.025/kWh**

Case 2:

No. of Units : 2
 Capacity of Each Unit : 100 MW
 Total Contracted Capacity : 200 MW
 Tested Capacity – Unit 1 :100 MW
 Tested Capacity – Unit 2 :100 MW
 Contracted Capacity at the Effective Date of all Units not Commissioned: 0 MW

Reduction in Quoted Non –Escalable Capacity Charge:

Rs. 0.25 / kWh × [1 – {(Tested Capacity of all Commissioned Units + Contracted Capacity at the Effective Date of all Units not Commissioned)/Contracted Capacity at the Effective Date of all Units}]

$$0.25 \times [1 - \{(200 + 0)/200\}]$$

Reduction in Quoted Non –Escalable Capacity Charge = **Rs. 0.000/kWh**

Case 3:

No. of Units : 2
 Capacity of Each Unit : 100 MW
 Total Contracted Capacity : 200 MW

Tested Capacity – Unit 1 :80 MW
 Tested Capacity – Unit 2 :0 MW

Contracted Capacity at the Effective Date of all Units not Commissioned: 100 MW

Reduction in Quoted Non –Escalable Capacity Charge:

Rs. 0.25 / kWh × [1 – {(Tested Capacity of all Commissioned Units + Contracted Capacity at the Effective Date of all Units not Commissioned)/Contracted Capacity at the Effective Date of all Units}]

$$0.25 \times [1 - \{(80 + 100)/200\}]$$

Reduction in Quoted Non –Escalable Capacity Charge = **Rs. 0.025/kWh**